In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-93

PAUL BROWN, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 74-138

MARY ANN PRADER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the district court failed to comply with the requirements of Rule 11, Fed. R. Crim. P., in accepting their guilty pleas; petitioners in No. 74-138 also contend that they were subjected to an unlawful border search.

Petitioners pled guilty in the United States District Court for the Northern District of Illinois to conspiring to import cocaine, in violation of 21 U.S.C. 963. In addition, petitioners Ellen Sue Stewart and Sandra Stewart pled guilty to distributing illegally imported

cocaine, in violation of 21 U.S.C. 959, and petitioners Susan Prader Tucker and Mary Ann Prader pled guilty to unlawfully importing cocaine, in violation of 21 U.S.C. 952(a). Petitioners Brown, Dilanjian, and Sheridan were each sentenced to a term of three years' imprisonment. Petitioners Susan Prader Tucker and Sandra Stewart were each sentenced to a term of one year's imprisonment. Petitioners Mary Ann Prader and Ellen Sue Stewart were each sentenced to a term of six months' imprisonment. Each petitioner was also sentenced to the special parole period of three years required by 21 U.S.C. 960. The court of appeals affirmed (Pet. App. A).[1]

The facts are set forth in the opinion of the court of appeals. Petitioners Mary Ann Prader and Susan Prader Tucker returned to the United States from Mexico on April 8, 1973. Upon passing through customs inspection at O'Hare International Airport in Chicago, Mrs. Tucker was stopped by Customs Patrol Officer Goodson, who was suspicious of the appearance of her skirt, which "fitted rather tightly at the waistline and then sort of flared out to a length to perhaps to her ankles" (Pet. App. 3). Goodson requested two female Customs employees to search Mrs. Tucker in a private room.

When the three women were alone, the Customs agents told Mrs. Tucker that a bulge in the midriff area of her skirt had aroused Goodson's suspicion. Mrs. Tucker then voluntarily exposed her abdomen momentarily and then quickly brought her skirt

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[1] "Pet. App." refers to the appendix to the petition in No. 74-93.

back up to its normal position. The court of appeals summarized the subsequent events as follows (Pet. App. 3-4):

> Because this movement was done without any instructions from the Customs inspectors and because Susan [Prader Tucker] "pushed the skirt down and then stopped * * * and brought it back up," Mrs. Holihan [a Customs inspector] "became suspicious that perhaps she had something underneath her skirt further down on her legs." Without removing any clothing, Mrs. Holihan lifted Susan's skirt up from the bottom to above her knees where she discovered packages bandaged or taped to her legs. One of the inspectors then left the private room and advised Goodson of their discovery. After the contents of the packages were field tested and found positive, Goodson identified himself to Mary Ann [Prader] and took her back to the inspection room, where similar packages were found taped to her legs.

Petitioners Prader and Tucker brought a motion to suppress the seized evidence, which the district court denied.

In January 1974, each petitioner pled guilty to the charges in the indictment. In accepting the Prader sisters' pleas, the district judge stated: "I think you could preserve your right to appeal on * * * [the motion to suppress] even if you plead guilty, subject to that condition" (Pet. App. 4). The prosecutor, however, expressly refused to acquiesce in any condition which would have reserved the right to appeal the suppression ruling (*ibid.*).

1. Petitioners contend that the district court failed to comply with Rule 11, Fed.R.Crim.P., in the course of accepting their guilty pleas.[2] The facts relating to each group of petitioners are as follows:

a. Petitioners Brown, Dilanjian, Sheridan,[3] Prader, and Tucker entered guilty pleas on January 16, 1974. The district court inquired whether each petitioner was satisfied with his or her representation (January 16 Tr. at 7) and whether each petitioner understood the consequences of a guilty plea as constituting a waiver of trial and of the right to confront witnesses

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[2]Rule 11 provides:

> A defendant may plead not guilty, guilty or, with the consent of the court, *nolo contendere*. The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of *nolo contendere* without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

[3]Petitioner Sheridan raises the contention that the court did not adequately resolve the question whether use of methadone affected his plea. This contention was properly rejected by the court of appeals (Pet. App. 12-13):

> The record shows that the court spent a relatively long period of time in the presence of all of the defendants at the acceptance of the pleas and again at sentencing and addressed all of them, including Sheridan, personally on several occasions. At sentencing, a representative of the Methadone Maintenance Institute was present and said:
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> > Mr. Sheridan is a patient at the Methadone Maintenance Institute. He has been very faithful in his attendance at the clinic. We have weekly therapy sessions.

(*id.* at 8). The court then inquired whether each petitioner understood the maximum consequences of his plea (*id.* at 9-11). The court determined that each petitioner was aware of the plea conferences between counsel and the government and that their pleas were entered with an understanding of the sentences that the government would recommend. Petitioners indicated that their pleas were not induced by either promises or threats (*ibid.*). In addition, petitioners were questioned about the factual basis for their pleas, after which the court summarized the charges against them (*ibid.*).

> Mr. Sheridan has come to those sessions on a sort of regular basis. We feel that he is trying very hard to participate well in the program. We feel that his regular attendance is testimony to that fact.
>
> Whereupon the following took place:
>
> THE COURT: Well, Mr. Sheridan's statement to the probation officer is, apparently, that he was not getting very much treatment from you organization and apparently wasn't benefitting very much from it.
>
> Is that correct?
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> DEFENDANT SHERIDAN: No sir. That was the Veterans Administration when I was under the program over there. I switched over to the Methadone Maintenance Institute which is much better, really.
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> THE COURT: When did you switch over?
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> DEFENDANT SHERIDAN: I started in August at the VA and I switched over in about September, I believe.
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> THE COURT: Of '73?
>
> DEFENDANT SHERIDAN: Yes.
>
> Inasmuch as Sheridan never contended that he was under the influence of drugs at the time of his plea, in view of his satisfactory treatment for about five months prior to his plea, and because of the court's close personal observation of him, we conclude that Sheridan's guilty plea, as [those] of the other defendants, was voluntary.

Petitioners admitted having a conversation in which they planned to import cocaine unlawfully *(id.* at 13-14). The court then further developed the actual conduct of the conspiracy *(id.* at 15-17). There is no doubt that there was any misunderstanding of the charge against them or the existence of a sufficient factual basis for their plea.

b. Petitioners Ellen Sue Stewart and Sandra Stewart entered their guilty pleas on January 17, 1974. They were advised of their right to a jury trial and their attorney stated in open court that he "told them about * * * their right to a jury trial, their right to be confronted with witnesses and all of that" (January 17 Tr. at 4). They were then informed by the court that these rights would be waived by pleading guilty. Petitioners acknowledged this advice (*id.* at 4-5). The court questioned petitioners about their earlier plea conferences with the government and the government's expected recommendation of sentences (*id.* at 5). Petitioners indicated that no other promises or threats induced their pleas (*id.* at 6). The court then explained the charge to them, in terms similar to those used the previous day (*id.* at 6-7). Petitioners admitted their participation in the "conspiracy or agreement" as described by the court and their commission of the overt acts charged (*ibid.*). They also admitted transferring the cocaine to petitioners Prader and Tucker in Mexico knowing that it would be unlawfully imported into the United States (*id.* at 8). Petitioners were informed of the maximum imprisonment to which they would be liable, but the district court neglected to advise them at that time that they would also be subject to a mandatory three-year special parole term under 21 U.S.C. 960.

Petitioners' claims that the district court failed to comply with Rule 11 were correctly rejected by the court of appeals (Pet. App. 11):

> In regard to the interrogation of the defendants by the court before accepting their guilty pleas, we conclude that the court adequately addressed each defendant personally and determined that the plea was made voluntarily with understanding of the charge and the consequences of the plea as required by Rule 11 * * *.

Petitioners Ellen Sue Stewart and Sandra Stewart contend that they should have been advised of the three-year term of special parole. This contention was correctly rejected by the court of appeals on the ground that the district court had discussed the special parole term in their presence and in the presence of their counsel prior to sentencing, while they still had an opportunity to withdraw their guilty pleas (Pet. App. 12).

2. Petitioners Prader and Tucker contend that they were subjected to an unlawful search. These claims were waived by petitioners' guilty pleas. *Brady* v. *United States*, 397 U.S. 742, 750; *McMann* v. *Richardson*, 397 U.S. 759, 770; *Parker* v. *North Carolina*, 397 U.S. 790. As this Court stated in *Tollet* v. *Henderson*, 411 U.S. 258, 267:

> We thus reaffirm the principle recognized in the *Brady* trilogy: a guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims

relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann*.

The court of appeals, however, felt constrained to consider petitioners' arguments, and we summarize the court's reasoning here, which we believe correctly disposes of the contentions.

a. Susan Prader Tucker claims that once she had bared her midriff, there was no longer any reasonable suspicion that would justify further search of her body. But the manner in which petitioner had quickly lowered and raised her skirt made one of the attending female agents suspicious. The court of appeals correctly found that petitioner's actions resulted in the creation of a "real suspicion" on the part of the Customs inspectors that justified the resulting search (Pet. App. 9). See, *e.g., United States* v. *Price*, 472 F. 2d 573 (C.A. 9). Border searches by Customs officials are not governed by the usual Fourth Amendment standard of probable cause (see, *e.g., Carroll* v. *United States*, 267 U.S. 132, 154), and the court of appeals correctly concluded "that the level of suspicion was high enough to justify the relatively dignified search to which both girls were subjected" (Pet. App. 11).

b. Mary Ann Prader claims that the Customs inspector had no independent basis for suspecting her other than her appearance of being friendly with her sister, who was immediately behind her in line. But Customs officials have traditionally been granted broad statutory authority to conduct searches of persons enter-

ing into the United States. See 19 U.S.C. 482. "The extraordinary deference accorded this unique category of searches is based on a recognition of the difficulty involved in effectively policing our national boundaries." *United States* v. *Hill*, 430 F. 2d 129, 131 (C.A. 5); *Klein* v. *United States*, 472 F. 2d 847, 849 (C.A. 9). Such searches do not require probable cause, but need only be reasonable. *United States* v. *McDaniel*, 463 F. 2d 129, 132 (C.A. 5), certiorari denied, 413 U.S. 919; *United States* v. *De La Cruz*, 420 F. 2d 1093, 1095 (C.A. 7); *Witt* v. *United States*, 287 F. 2d 389, 391 (C.A. 9), certiorari denied, 366 U.S. 950; *United States* v. *Glaziou*, 402 F. 2d 8, 12 (C.A. 2), certiorari denied, 393 U.S. 1121. The district court correctly found (Pet. App. 10):

> The further search [of Susan] turned up the packages, and these in turn afforded the patrol officer with reasonable grounds to suspect sister Mary Ann who had been passed previously. * * * We see no reason why this subsequent suspicion need to occur only while the suspect was within the confines of the inspection area; Mary Ann was still inside the International Building, a mere fifteen feet outside the door of the inspection area, and she admittedly had no intention of leaving the building before her sister.

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1974.